

# EXHIBIT A

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 1 UNITED STATES DISTRICT COURT  
 2 SOUTHERN DISTRICT OF NEW YORK

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3 11 CV 05201 (DLC)

3 FEDERAL HOUSING

4 FINANCING AGENCY 11 CV 06188 (DLC)

4 11 CV 06189 (DLC)

5 11 CV 06190 (DLC)

5 v. 11 CV 06192 (DLC)

6 11 CV 06193 (DLC)

6 UBS AMERICAS INC. 11 CV 06195 (DLC)

7 and others and its 11 CV 06196 (DLC)

7 related cases 11 CV 06198 (DLC)

8 11 CV 06200 (DLC)

8 11 CV 06201 (DLC)

9 11 CV 06202 (DLC)

9 11 CV 06203 (DLC)

10 11 CV 06739 (DLC)

10 11 CV 06805 (DLC)

11 11 CV 07010 (DLC)

11 11 CV 07048 (DLC)

12 -----x

July 19, 2012

4:12 p.m.

13 Before:

14 HON. DENISE COTE,

15 District Judge

16 APPEARANCES

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1 loans plaintiff claims were defective, and just as importantly,  
2 we do not know the manner in which plaintiff claims they're  
3 defective.

4 There are a myriad ways in which plaintiff could  
5 allege the loan was not underwritten in accordance with  
6 underwriting guidelines. It could be missing documentation or  
7 a FICO score that's too low, but we can't prepare our defenses  
8 without knowing the basis for plaintiff's claims, and this is a  
9 review that plaintiff predicated its action on.

10 To the extent in its letter from yesterday, plaintiff  
11 indicated, well, we may not rely on that same review to  
12 prosecute its claims. If that's the case, you know, we need  
13 the sample and the results of whatever review they're  
14 purporting to rely on as soon as possible, as well.

15 As your Honor just indicated, and as your Honor  
16 indicated during the June 13th conference, we should have  
17 rolling expert disclosures. We have repeatedly asked plaintiff  
18 at meet and confers over the last several weeks, for a date  
19 certain by which plaintiff will identify the specific loans by  
20 loan ID, and any sample it intends to use, the loans within  
21 that sample that it claims are defective and the manner in  
22 which each such loan is purportedly defective.

23 If we have that information, if plaintiff agrees to  
24 provide that information, defendants will respond on a  
25 loan-by-loan basis, and then the parties can narrow the

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1 disputed loans at issue for the rest of discovery and for  
2 expert discovery. The loans at issue, meaning the loans that  
3 plaintiff intends to rely on to prosecute its claims.

4 So in terms of timing with respect to the forensic  
5 review that they've alleged, that's all been done, and we think  
6 we're entitled to at least the results of those reviews or any  
7 report. And after we've received that, we can think about how  
8 to potentially narrow the request.

9 I would point out for your Honor that the only cases  
10 that plaintiff cites that address these issues in footnote one  
11 of their submission, in both of those cases plaintiff had  
12 already produced to defendants either the final report or the  
13 results of the forensic review, i.e. the specific loans it was  
14 claiming were in breach and the specific manners in which they  
15 were breached. That's the information we're asking for here in  
16 the first instance, and we don't see any reason why it  
17 shouldn't be produced right away.

18 THE COURT: Well, Mr. Fumerton, I have a couple of  
19 reactions to that. Whatever review the plaintiffs did at the  
20 time they were preparing their complaint would not limit their  
21 ability to present an argument at trial. So in a way, it's  
22 sort of a wasted effort for you, even if you had access to this  
23 review, to spend much time on it because the plaintiffs would  
24 be entirely within their rights to do a completely new review  
25 of different loan files with completely different numbers and

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1 present that evidence at trial.

2 Let me ask you this question, Mr. Fumerton. How long  
3 have the plaintiffs had the loan files for the supporting loan  
4 groups that are at issue in the UBS case?

5 MR. FUMERTON: Your Honor, to address that question,  
6 we don't know what loan files plaintiff has. We've repeatedly  
7 asked plaintiff for the loan files in the supporting loan  
8 groups in the UBS action and they have not produced them to us  
9 yet. UBS does not maintain these loan files as a matter of  
10 course; so we don't have them. We've sought from third parties  
11 the loan files, the -- sorry. We sought from plaintiff on  
12 May 22nd all of the loan files they have, and we served  
13 third-party discovery requests for all the loan files from  
14 third parties.

15 So if those plaintiffs and UBS are trying to get all  
16 of the loan files from the supporting loan groups, we don't  
17 have them in our possession. We know that plaintiff does have  
18 some because they've conducted this review, and we've asked  
19 them for it, but we haven't received them to date.

20 If I could just, your Honor, address the point you  
21 just made, which is, you know, if plaintiff is going to change  
22 its methodology, you know, we don't need to see the results of  
23 the review they allege in their complaint. We actually think,  
24 you know, we are entitled to see the result of that review  
25 because to the extent the review they conducted or the results

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1 of that review, which they've predicated their entire claims  
2 on, as your Honor recognized in the motion to dismiss decision,  
3 we think we're entitled to see what that methodology was, to  
4 the extent it contradicts the methodologies plaintiff intends  
5 to use down the line.

6 We think that's very fertile ground for  
7 cross-examination and, again, we think we're entitled to that  
8 information because plaintiff expressly relied on those very  
9 reviews and the results of those very reviews to survive  
10 motions to dismiss.

11 THE COURT: Well, Mr. Fumerton, thank you for those  
12 comments, but I think -- and, of course, Ms. Chung can give me  
13 the perspective of the FHFA, but it seems to me in knowledge in  
14 supervising civil litigation, that the defendants are entitled  
15 to develop an evidentiary basis through discovery beyond that  
16 on which they premise their pleadings.

17 And I'm happy to meet with counsel, if you're at  
18 loggerheads, in working out a more detailed schedule for the  
19 conduct of expert discovery. But as we discussed at the last  
20 conference, the position of the plaintiff, in response to the  
21 defendants' position, was such that there was no agreement that  
22 any subset of loan files from the supporting loan groups would  
23 be the basis of the trial of the claims in this case.

24 As a result, despite the burden and expense it will  
25 place on all parties, my conclusion from that conference is

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1 that you were all in agreement, you had to have access to a  
2 hundred percent of the loan files from the supporting loan  
3 groups and so unless and until the plaintiffs and defendants  
4 have access to that complete universe, based on your current  
5 positions with each other, that it is impossible to do any  
6 sampling, at least from the defendants' position, meaningful  
7 sampling to which you're willing to restrict yourself without  
8 access to all of the loan files for the supporting loan groups.

9 It would be impossible to expect either defense  
10 counsel's expert or plaintiff counsel's expert to come up with  
11 the analysis on which they're going to rely at trial. Now, if  
12 your position is chain ming and you're happy to restrict the  
13 trial in the UBS case to the loan files that the FHFA currently  
14 has in its possession and require it then to produce an expert  
15 report on, you know, a prompt basis, I think we're talking  
16 about a different kind of schedule.

17 So let me say I'll think about these issues, but  
18 preliminarily, I'm not going to require the FHFA to produce its  
19 review that it used of loan files for draft complaints in this  
20 litigation before it would produce the expert report on which  
21 it's going to rely at trial for its analysis of, among other  
22 things, a failure to comply with underwriting guidelines. I'll  
23 look carefully at my own research and, of course, anything the  
24 parties have cited in their letters with respect to whether it  
25 even needs to produce its review that it used for the

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1 complaints at that time.

2 Let's turn to the second issue -- Well, before we do  
3 that --

4 MR. FUMERTON: Your Honor, I can address two points  
5 quickly, please?

6 THE COURT: Is this Mr. Fumerton?

7 MR. FUMERTON: It is. I'm sorry. Rob Fumerton from  
8 Skadden, Arps.

9 With respect to the results of the forensic review  
10 alleged in the complaint, we're aware of no authority that  
11 would allow them, to the extent that they've waived that work  
12 product privilege, and we think that it's clear that they have  
13 by placing at issue in the complaint, we're aware of no  
14 authority to delay production of materials that they already  
15 have.

16 We're not saying that the plaintiff isn't entitled to  
17 develop its claims or to develop further methodologies  
18 throughout discovery. We're not taking that position at all.  
19 We're saying to the extent that they already performed this  
20 work and put it at issue in the complaint, we're entitled to it  
21 now.

22 Second, with respect to sampling, the defendants'  
23 position hasn't changed. We do think it's inappropriate for  
24 all the reasons we talked about at the last conference, in our  
25 submission, to restrict the universe of loan files at this

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1 stage. Plaintiff, however, has indicated to us that it intends  
2 to prosecute its claims through the use of the sample.  
3 Plaintiff's counsel even informed us, informed defendants, that  
4 it would, quote, roll out these samples so the prioritization  
5 of loan file production could include the loans in their  
6 sample.

7 What we're saying here is, look, we, obviously, need  
8 access or potentially need access to loan files outside of  
9 plaintiff's sample to develop various defenses, including  
10 causation and everything we've submitted last month. But what  
11 we are in favor of, which your Honor has expressed, you know, a  
12 view of at the last conference is to set a schedule early for  
13 plaintiff to identify the sample that it has already informed  
14 us it is using, identify the loans in that sample that claims  
15 are defective and the manner in which they're defective.

16 And then we can respond, but we can't respond until we  
17 have that additional information because we don't know how  
18 plaintiff attempts to prosecute these claims. We don't know  
19 what loans plaintiff intends to rely on, and we don't know the  
20 breaches that plaintiff is going to affirm to prove. Once we  
21 have that information, we can respond.

22 THE COURT: Okay. And have you made a proposal,  
23 Mr. Fumerton, with what you think is an appropriate schedule  
24 here?

25 MR. FUMERTON: We are -- We've asked plaintiff  
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1 repeatedly at meet and confer if they would agree to a date  
2 certain. They said they would not, but we are absolutely  
3 prepared to propose a specific date, specific deadlines for the  
4 plaintiff to provide the samples and the manner in which such  
5 loans are defective, and then respondents will respond at least  
6 on behalf of UBS on a loan-by-loan basis. So we're absolutely  
7 prepared to present a schedule to the Court.

8 THE COURT: So, Miss Chung, is there any reason why  
9 these meet and confers can't meet and the parties agree on a  
10 schedule and, if necessary, then meet with me the following  
11 week?

12 MS. CHUNG: Your Honor, no, but I think I would like a  
13 chance to respond. Your Honor rightly pointed out that there  
14 are sort of two groups of loans at issue. There's a group of  
15 loans that were reviewed for the complaint. There is a group  
16 of loans that are going to be samples, at least, you know, we  
17 do plan to propose a sample.

18 I can tell the Court in terms of what Mr. Fumerton is  
19 proposing, we're going to identify next week to him the loans  
20 that we are going to be looking at in both of those groups. We  
21 said in our letter to the Court that we're going to be sending  
22 to all defendants a list of the loans, by loan number, that we  
23 reviewed in getting the complaint.

24 To the extent that their concern is we don't have  
25 notice right now of which loans you were looking at in that

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1 group, they're going to have that. They're going to have most  
2 of that next week. It might carry over until the week after  
3 that, but we're going to be able to identify all those loans to  
4 them in very short order.

5 In the second group of loans that Mr. Fumerton is  
6 talking about, I want to be clear because your Honor is making  
7 a proposal. This has been the topic of many, many meet and  
8 confers between the plaintiff and defendants. In our view, it  
9 has two separate sets. We are willing to identify, and I said  
10 this at the outset, the loans that we're going to be looking at  
11 as samples and we're generating the sampling protocols, but  
12 that has been limited by, among other things, our inability or  
13 suffice -- let me put it in a positive way.

14 The parties have been working together to get us all  
15 the information that we need to generate our sampling protocol.  
16 I don't know what the defense is doing in terms of their  
17 protocol, but we will generate ours now. The UBS protocol, we  
18 will identify standalones that we intend to rely on next week.

19 So we know that your Honor's aware that we proposed a  
20 UBS protocol in our mission support for the last conference.  
21 We did reserve the right to refine that based on other  
22 information that came in from the loan case. So we're revising  
23 that analysis now, but sometime next week we'll be able to  
24 identify, next week, in the UBS case, which loans will be --  
25 let's put it this way, will be in our sample, and they will

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